

and (b)(3) if the Secretary has not certified, in accordance with §1215.4(d), that the State has achieved the applicable safety belt use rate.

(c) If, at the end of a fiscal year in which the funds are reserved for New Hampshire or Maine under paragraph (b) of this section, the Secretary has not certified that the State achieved the applicable safety belt use rate, the Secretary shall transfer the funds reserved from the State to the apportionment of the State under 23 U.S.C. 402.

(d) Any obligation limitation existing on transferred funds prior to the transfer will apply, proportionately, to those funds after transfer.

[61 FR 28749, June 6, 1996]

§ 1215.8 Use of transferred funds.

(a) Any funds transferred under §1215.7 may be used for approved projects in any section 402 program area.

(b) Any funds transferred under §1215.7 shall not be subject to Federal earmarking of any amounts or percentages for specific program activities.

(c) The Federal share of the cost of any project carried out under section 402 with the transferred funds shall be 100 percent.

(d) In the event of a transfer of funds under §1215.7, the 40 percent political subdivision participation in State highway safety programs and the 10 percent limitation on the Federal contribution for Planning and Administration activities carried out under section 402 shall be based upon the sum of the funds transferred and amounts otherwise available for expenditure under section 402.

PART 1225—OPERATION OF MOTOR VEHICLES BY INTOXICATED PERSONS

Sec.

1225.1 Scope.

1225.2 Purpose.

1225.3 Definitions.

1225.4 General requirements.

1225.5 Adoption of 0.08 BAC *per se* law.

1225.6 Award procedures.

AUTHORITY: 23 U.S.C. 163; delegation of authority at 49 CFR 1.48 and 1.50.

SOURCE: 63 FR 46886, Sept. 3, 1998, unless otherwise noted.

§ 1225.1 Scope.

This part prescribes the requirements necessary to implement Section 163 of Title 23, United States Code, which encourages States to enact and enforce 0.08 BAC *per se* laws.

§ 1225.2 Purpose.

The purpose of this part is to specify the steps that States must take to qualify for incentive grant funds in accordance with 23 U.S.C. 163, and to encourage States to enact and enforce 0.08 BAC *per se* laws.

§ 1225.3 Definitions.

As used in this part:

(a) *BAC* means either blood or breath alcohol concentration.

(b) *BAC per se law* means a law that makes it an offense, in and of itself, to operate a motor vehicle with an alcohol concentration at or above a specified level.

(c) *Alcohol concentration* means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(d) *Has enacted and is enforcing* means the State's law is in effect and the State has begun to implement the law.

(e) *Operating a motor vehicle* means driving or being in actual physical control of a motor vehicle.

(f) *Standard driving while intoxicated offense* means the non-BAC *per se* driving while intoxicated offense in the State.

(g) *State* means any one of the fifty States, the District of Columbia, or Puerto Rico.

§ 1225.4 General requirements.

(a) Qualification requirements.

(1) To qualify for a first-year grant under 23 U.S.C. 163, a State must submit a certification by an appropriate State official, that the State has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and §1225.5 of this part and that the funds will be used for eligible projects and programs. The certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____ has enacted and

§ 1225.5

23 CFR Ch. II (4–1–98 Edition)

is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.5, (citations to State law), and that the funds received by the (State or Commonwealth) of _____ under 23 U.S.C. 163 will be used for projects eligible for assistance under Title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(2) To qualify for a subsequent-year grant under 23 U.S.C. 163, a State must submit a certification by an appropriate State official.

(i) If the State's 0.08 BAC *per se* law has not changed since the State last qualified for grant funds under this program, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____ has not changed and is enforcing a 0.08 BAC *per se* law, which conforms to 23 U.S.C. 163 and 23 CFR 1225.5, (citations to State law), and that the funds received by the (State or Commonwealth) of _____ under 23 U.S.C. 163 will be used for projects eligible for assistance under Title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(ii) If the State's 0.08 BAC *per se* law has changed since the State last qualified for grant funds under this program, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____ has amended and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.5, (citations to State law), and that the funds received by the (State or Commonwealth) of _____ under 23 U.S.C. 163 will be used for projects eligible for assistance under Title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(3) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each Regional Administrator will forward the certifications it receives to appropriate NHTSA and FHWA offices.

(4) Each State that submits a certification will be informed by the agencies whether or not it qualifies for funds.

(5) To qualify for FY 1998 grant funds, certifications must be received by the

agencies not later than September 4, 1998.

(6) To qualify for grant funds in a subsequent fiscal year, certifications must be received by the agencies not later than July 1 of that fiscal year.

(b) Limitation on grants. A State may receive grant funds, subject to the following limitations:

(1) The amount of a grant apportioned to a State under § 1225.5 of this part shall be determined by multiplying:

(i) The amount authorized to carry out section 163 of 23 U.S.C. for the fiscal year; by

(ii) The ratio that the amount of funds apportioned to each such State under section 402 for such fiscal year bears to the total amount of funds apportioned to all such States under section 402 for such fiscal year.

(2) A State may obligate grant funds apportioned under this part for any project eligible for assistance under Title 23 of the United States Code.

(3) The Federal share of the cost of a project funded with grant funds awarded under this part shall be 100 percent.

§ 1225.5 Adoption of 0.08 BAC *per se* law.

To qualify for an incentive grant under this part, a State must demonstrate that it has enacted and is enforcing a law that provides that any person with a blood alcohol concentration (BAC) of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense. The law must:

(a) Apply to all persons;

(b) Set a blood alcohol concentration of not higher than 0.08 percent as the legal limit;

(c) Make operating a motor vehicle by an individual at or above the legal limit a *per se* offense;

(d) Provide for primary enforcement;

(e) Apply the 0.08 BAC legal limit to the State's criminal code and, if the State has an administrative license suspension or revocation (ALR) law, to its ALR law; and

(f) Be deemed to be or be equivalent to the standard driving while intoxicated offense in the State.